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9 K.O.O. CONSTRUCTION, INC.

10 UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA FOR
13 USE AND BENEFIT OF HUDSON P.
14 DAVIS, INC. d/b/a DAVIS
15 MECHANICAL, a California corporation,

16 Plaintiff,

17 vs.

18 K.O.O. CONSTRUCTION INC., a
19 California corporation; TRAVELERS
20 CASUALTY AND SURETY COMPANY
21 OF AMERICA; and DOES 1 through 20,
22 inclusive,

23 Defendants.

24 K.O.O. CONSTRUCTION, INC., a
25 California corporation;

26 Counterclaimant,

27 v.

28 HUDSON P. DAVIS, INC. d/b/a DAVIS
MECHANICAL, a California corporation
and ROES 1-10, inclusive,

Counterdefendants.

Case No. 3:15-cv-02869-W-DHB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION AND MOTION TO
WITHDRAW AS COUNSEL OF
RECORD**

Date: May 23, 2016

Dept: Courtroom 3C

**NO ORAL ARGUMENT
(Civil Local Rule 7.1.d.1)**

1 Rule 3-700(C)(1)(d) of the California Rules of Professional Conduct specify that
 2 where a client's conduct renders it unreasonably difficult for the member to carry out the
 3 employment effectively, the attorney may request permission to withdraw as counsel. Model
 4 Rule of Professional Conduct 1.16(b)(6) allows permissive withdrawal where "the
 5 representation will result in an unreasonable financial burden on the lawyer or has been
 6 rendered unreasonably difficult by the client."

7 The reasons for this requested withdrawal are set forth in the Declaration of Patricia
 8 A. Meagher in Support of Motion to Withdraw as Counsel of Record ("Meagher Decl.") In
 9 summary, KOO has not executed the representation agreement provided to it, has not
 10 furnished the requested retainer and has not paid the monthly billing statements for this
 11 matter. Further details will be provided to the Court in camera if necessary.

12 KOO has been notified that Rogers Joseph O'Donnell and Patricia A. Meagher cannot
 13 continue to represent its interests and that it needs to seek other counsel. There has been no
 14 response from KOO.

15 Continued representation of KOO would result in an unreasonable financial burden on
 16 counsel of record. In addition to the unpaid fees and costs incurred to date, the pleadings in
 17 this action and the initial disclosures exchanges by the parties establish that this case will
 18 require the production of extensive documentation, the depositions of numerous witnesses,
 19 and the retention of one or more experts, at a significant cost. See Meagher Decl. ¶ 4.

20 For the reasons stated above and explained in further detail in the Meagher
 21 Declaration filed concurrently herewith, counsel of record has no choice but to seek
 22 permission from the Court to withdraw from representation of KOO in this case.

23 Dated: April 12, 2016

ROGERS JOSEPH O'DONNELL

25 By: /s/ Patricia A. Meagher
 26 PATRICIA A. MEAGHER
 27 Attorneys for Defendant and Counterclaimant
 28 K.O.O. CONSTRUCTION, INC.

PROOF OF SERVICE
[FRCivP 5(b)]

I, Lisa Herico, state: My business address is 311 California Street, 10th Floor, San Francisco, CA 94104. The electronic notification address from which I served the documents listed below is: fyh@rjo.com. I am employed in the City and County of San Francisco where this service occurs or mailing occurred.

I hereby certify that on April 12, 2016 I electronically filed the foregoing document with the United States District Court for the Southern District of California by using the CM/ECF system.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
AND MOTION TO WITHDRAW AS COUNSEL OF RECORD**

I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

NAMES AND ADDRESSES OF PARTIES SERVED

Murray M. Helm, Jr. Law Offices of Murray M. Helm, Jr. 550 West "C" Street, Suite 1155 San Diego, California 92101	Attorneys for Plaintiff Hudson P. Davis, Inc., dba Davis Mechanical Systems Tel. No.: (619) 234-6744; Fax No.: (619) 234-6860 E-mail:
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Michael J. Timpane SALAMIRAD, MORROW, TIMPANE MORROW, TIMPANE 1999 Harrison Street, Suite 660 Oakland, California 94612-3584	Attorneys for Defendant Travelers Casualty and Surety Company of America Tel: (510) 907-3245; Fax: (510) 285-6052 E-mail: mt@smtlaw.com
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I further certify that on April 12, 2016, I served a copy of the foregoing document to

K.O.O. Construction Inc.
Attention: Keith O. Odister
 2510 Boatman Avenue
 West Sacramento, CA 95691
 E-mail: kodister@kooconstruction.com

by:

X **BY OVERNIGHT DELIVERY:** On April 12, 2016, I caused such envelope to be delivered by a commercial carrier service (Federal Express) for overnight delivery to the office(s) of the addressee(s).

X **BY ELECTRONIC SERVICE:** On April 12, 2016, I caused the document to be sent to the person at the electronic notification address(es) listed above. Within a reasonable time, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this date at San Francisco, California.

Dated: April 12, 2016



 Lisa Herico